IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2903 OF 1989

Professor Pervez H. Lentin ..Petitioner.

Vs.

The Principal St.Xavier's College & Ors. ..Respondents.

Mrs.N.Bhagwat for the Petitioner.

Mr.Girish Kulkarni i/b.M/s.M.S.B for Respondent No.1.

Mr.M.D.Naik, A.G.P. for the State.

Mr.R.Rodrigues for the University.

CORAM: A.P.SHAH AND
S.J.VAZIFDAR, JJ.

DATED: 17TH FEBRUARY, 2005

ORAL JUDGMENT : (Per S.J.Vazifdar, J.)

Respondent No.2 is the Vice Chancellor, University of Bombay. Respondent No.3 is the Administrative Officer, Higher Education (Grants), Bombay. Respondent No.4 is the Secretary, Education Department, Government of Maharashtra. Respondent Nos.5 and 6 are the State of Maharashtra and the Bombay University and College Teachers Union respectively. Respondent No.7 is the St. Xavier's College Society, Bombay.

2. The Petitioner has sought a writ of Mandamus directing Respondent Nos.1, 2, 3 and 5 to grant him seniority and continuity with retrospective effect from the date of his initial appointment i.e. from the academic year 1974 with the permitted increments in the salary till date; a writ of Certiorari to quash the impugned communication dated 27.7.1989 and for a declaration, declaring him to be a permanent lecturer at the college from 1.7.1975, to fix his pay in the scale of Rs.3700-5700 with effect from 1.1.1986, for implementation of certain Government Resolutions and for seeking other consequential reliefs.

3. The entire controversy in the matter arose due to the introduction by the Government of the 10+2+3 system of education in 1976. As a result of the introduction of this system certain lecturers were found to be surplus in the senior college due to the reduction of one year in the senior college. Some of these lecturers were, required to serve in the junior college with the understanding that they would be transferred to the senior college as and when vacancies arose. The Petitioner’s was one such case which was affected by the introduction of the

10+2+3 system. It is necessary therefore to trace the manner in which the Petitioner's position was affected and, thereafter, to consider his rights in accordance with the relevant G.Rs.

4. The Petitioner had obtained the B.Sc. and M.Sc. qualifications. By a letter dated 6.6.1970 the Siddharth College of Arts, Science and Commerce appointed the Petitioner to the temporary post of Demonstrator in Physics from 29.6.1970 to 5.6.1971. By a letter dated 16.6.1971 the Siddharth College extended the Petitioner's appointment as Demonstrator from 16.6.1971 to 15.6.1972. By letter dated 16.6.1972, the Petitioner was appointed in the K.C.College as a full time demonstrator in the Physics Department. The appointment was on a temporary basis from 19.6.1972. This appointment continued upto 1974. In the meantime, the Petitioner was by a letter dated 21.7.1972 informed by the principal of the K.C.College that his appointment had been approved as a demostrator in physics.

5. By letter dated 3.7.1974 the first Respondent appointed the Petitioner as a demonstrator on a part-time basis for the period 1.7.1974 to

15.6.1975. There seems to be no dispute that the Petitioner was appointed on a full-time vacancy which was split into two part-time vacancies.

Respondent No.1 by a letter dated 15.7.1975 appointed the Petitioner as a full-time demonstrator in physics from 1.7.1975 till 15.6.1976 stating that his pay would be in accordance with the scale laid down by the university and that he would receive dearness allowance at Government rates.

6. As observed earlier, in June 1976 the 10+2+3 system was introduced. To provide relief and to protect the teachers whose appointment and continued services were affected by introduction of this new system, the Government of Maharashtra from time to time issued G.Rs./circulars.

7. By a letter dated 16.6.1976 Respondent No.1 appointed the Petitioner as a full time demonstrator with effect from 16.6.1976 in the salary scale of Rs.300-650. It is important to note that the appointment was not for fixed duration. By a letter dated 19.3.1977 Respondent No.1 however stated that the Petitioner’s appointment was only till 15.6.1977. Respondent No.1 stated that he could not

state at that juncture what the Petitioner's position would be from 16.6.1977 until the Government specified whether the College would have Std.XI and/or Std.XII. The Petitioner was also called upon by Respondent No.1 to state whether he was interested in teaching in the college in the next academic year. The suggestion obviously was that if the Government permitted the college to run the XIth and XIIth standards, the Petitioner may have had the option of continuing with Respondent No.1. Subsequently, Respondent No.1, in fact, got such permission. Thus, by a letter dated 29.6.1977 Respondent No.1 appointed the Petitioner as a full time teacher in its junior college from 16.6.1977 to 15.6.1978 in physics. It is pertinent to note that there was no break, not even an artificial break in the Petitioner's services, even assuming that the previous appointment was only upto 15.6.1977 as stated in the letter dated 19.3.1977. This is for the obvious reasons that the letter dated 16.6.1977 the Petitioner's appointment was effected from the very next day i.e. 16.6.1977.

8. At this stage, a G.R. dated 25.10.1977 was issued. Much turns in this Petition on this G.R. However, we shall deal with the subsequent facts

before reverting to this G.R.

9. Correspondence ensued between the Petitioner and Respondent No.1 in the course of which Respondent No.1 continued/extended the Petitioner's appointment in the said post from time to time. There was really no dispute between the Petitioner and Respondent No.1. Respondent No.1, it appears, was uncertain about the question of the Petitioner's appointment being approved by the concerned authorities for disbursal of grant. In fact, Respondent No.1 informed the Petitioner candidly that he was deeply distressed that the Petitioner's appointment had to be made conditional because of the uncertainty prevailing in the field of higher education. Respondent No.1 however stated that he was required to obtain the post of a lecturer, a M.Phil. (or other such degree) within a period of five years from the date of his appointment.

10. Further, Respondent No.1 appointed the Petitioner as a permanent staff of the college as a lecturer in physics with effect from 20.6.1982. This correspondence comprised of three letters viz. letter dated 21.6.1978, 6.12.1978 and 20.4.1981.

11. It would be appropriate at this stage to refer to the G.R. dated 24th June, 1977. This G.R. was in suppression of the earlier G.R. dated 4.10.1995. The State Government had approved the implementation of the revised University Grants Commission recommended scales of pay for teachers in Universities and affiliated colleges in the State in the manner and subject to the terms and conditions mentioned therein.

It must be noted that the Petitioner's post as demonstrator was upgraded to that of a lecturer. This is clear from the following extract from the G.R. :

> "XII. Conversion of posts of Demonstrators Tutors :- Non-Government Colleges of Arts/Science/Commerce faculties shall, as already directed earlier -
>
> (a) Upgrade, with effect from the beginning of the academic year 1975-76 (i.e. from 1st July 1975) the existing posts of demonstrators/tutors held by persons possessing the qualifications for the posts of lecturers as prescribed by the University concerned, into those of lecturers.
>
> In view of the instructions issued earlier in that behalf, some colleges have already

> upgraded from 1st July, 1975 the posts of demonstrators/tutors held by persons possessing the qualifications for the posts of lecturers as prescribed by the University concerned. Such persons holding the upgraded posts of lecturers from 1st July 1975 and continued as lecturers at the college level beyond 30th June 1977 should be deemed to have satisfactorily completed their probationary period of two years.
>
> Colleges which have not yet formally upgraded from 1st July, 1975 the posts of demonstrators/tutors held by persons possessing the qualifications for the posts of lecturers prescribed by the University concerned, should do so now retrospectively from 1st July 1975 and fix the pay of the persons concerned in the prescribed pay-scale of lecturers (Rs.700-1,600) with effect from 1st July 1975. From 1st July 1975 onwards they should be allowed to draw their pay in the said scale of lecturer if they have continued at the college level. Merely the fact that they have been so allowed to draw pay in the scale of lecturers (Rs.700-1,600) from 1st July 1975 to 30th June 1977 shall not, however, mean that they have completed their period of probation of two years in the upgraded posts of lecturers satisfactorily. Their period of probation of two years should be computed with effect from 1st July 1977."

12. Secondly, it must be noted that under the said scheme, the pay scale of a Lecturer (Junior Scale)

is specified. In view of the Petitioner's post as demonstrator being up-graded to that of a lecturer, the pay-scale prescribed for the junior scale would be applicable. The relevant part of the G.R. reads as under :

"I. Pay-scales:- The existing and revised scales of pay sanctioned for different categories of University and College teachers are shown below :-

Serial No.	Present designation	Existing Scale of pay	Revised Designation	Revised Scale of pay
1	2	3	4	5
I.	University Teacher-			
1.	Professor (Senior scale)	1,600-100-1,800	Professor	1,500-60-1,800-100-2,000-125/2-2,500.
2.	Professor	1,100-50-1,300-60-1,600		
3.	Reader	700-50-1,250	Reader	1,200-50-1,300-60-1,900.
4.	Lecturer	400-40-800-50-950.	Lecturer	700-40-1,100-50-1,600.
II.	College Teachers-			
5.	.....			
6.	.....			
7.	Senior Lecturer	700-40-1,100	Lecturer	700-40-1,100-50-1,300-Assessment-
8.	Senior Lecturer	400-30-640-40-		

	800.	)	50-1,600.
9.	Lecturer (Junior Scale) .. 300-25-600	)	
10.	Demonstra-tor/Tutor .. 250-15-400	) Demonstra) tor."	500-20-700-25-900.

Thus, the Petitioner was entitled to be placed in the pay scale of Rs.700-1600. This was the revised pay scale.

13. The G.R. prescribed the qualification necessary for a candidate to be entitled to the revised pay scale. So far as the Petitioner is concerned, the relevant part of the condition reads as under :

> "V. Qualifications:- The qualifications prescribed by the University Grants Commission and accepted by the Government of India shall be applicable as a condition precedent to the teachers becoming eligible for the revised scales. They are as given below:-
>
> (a). .....
> .....
>
> (b). College Teachers:-
>
> (i) A consistently good academic record with first or higher second class (B+) at Master's degree in a relevant subject or an

equivalent degree of a foreign University, and

(ii) A.M.Phil. Degree or a recognised degree beyond the Master's level or published work indicating the capacity of a candidate for independent research work.

The qualifications mentioned in (a)/(b) above are applicable to lecturers/teachers who may be recruited hereafter i.e. on or after the date of this revised Government Resolution. The qualifications mentioned in (a)/(b) above are also applicable to lecturers/teachers recruited on or after 4th October 1975 by the Universities/Colleges.
Lecturers/teachers recruited by Universities/Colleges during the period commencing from 4th October 1975 till the date of this revised Government Resolution, who do not possess the qualifications mentioned in (a)/(b) above, will have to acquire these qualifications within a period of five years from the date this revised Government Resolution. If they are unable to do so during this period, they shall not be allowed to earn any future increment till they have satisfied this condition.

The teachers recruited on or before 3rd October 1975 in colleges, who did not possess at the time of their initial recruitment the minimum qualifications as prescribed by the University concerned should be required to attain the said qualifications within a period of five years from the date of this revised Government Resolution. If they are unable to do so during

> this period, they shall not be allowed to earn any future increment till they have satisfied this condition." (emphasis supplied)

The part emphasised by us above applies to the Petitioner for he was admittedly recruited before 3.10.1975.

14. Mrs.Bhagwat, the learned counsel appearing on behalf of the Petitioner submitted that the Petitioner had the prescribed qualifications at the time when he was appointed. The submission is well founded. The qualification required in the emphasised portion was the qualification which the Petitioner was required to have at the time of his appointment for entering into the said post. He was appointed as a demonstrator. At the relevant time the qualification for the said post was Second Class M.Sc. or First Class B.Sc. It is not disputed that the Petitioner had a Second Class in M.Sc. The requirement of these qualifications to the post of a demonstrator are to be found in the conditions "minimum qualification for appointment of teachers in constituent colleges", an extract whereof is annexed at Exhibit "Z1" to the Petition. This is also reiterated in a letter dated 17.3.1981

addressed by the Registrar of University of Bombay.

15. Further, by a clarification dated 21.7.1993 the Deputy Registrar stated that the new G.R. had done away with the condition of fixation of M.Phil/Phd. within the specified time. The condition therein that teachers appointed prior to 1.1.1986 whose increments were withheld for not passing M.Phil. in the old scale of pay would not get the same till 31.12.1985, would not apply to the Petitioner's case in any event.

16. The Petitioner was undoubtedly in continuous service. Indeed, what is termed as a break was at the highest an artificial break. From the correspondence referred to above, it appears to us clear that there in fact was not even an artificial break for the re-appointments were from the very next date. However, even assuming that the same in the Petitioner's case amounted to an artificial break, the Petitioner is adequately safeguarded by the circulars/ressolutions issued by the Government of Maharashtra. For instance, by a G.R. dated 7.6.1980 the Government recorded the fact that it had considered the representations made to it regarding such breaks; that it was observed that in

most of the cases services of teachers in junior colleges were terminated at the end of every academic year and they were appointed for the next academic year without benefit of continuous service and that it had further been represented to Government that such teachers should get the status of confirmed teachers if they had put in, in all, 24 months service even though it was not continuous due to the breaks given by the managements of the Non-Government Junior Collages. It was observed that such practice had resulted in a sense of insecurity amongst the employees and deprived them of benefits of continuous service. It was therefore directed that a total of 24 months service in the same institution over-looking the break in service, should qualify junior college teachers to be treated as substantitve subject to certain conditions. The Petitioner admittedly complied with all such conditions. Thereafter, by a further resolution dated 26.2.1981 this resolution was extended mutatis mutandis. The same was so far as it related to the counting of break periods towards completion of probation period of 24 months in respect of teachers of Non-Government Junior Colleges to the teachers of Non-Government Senior Colleges in the State as well.

17. The Petitioner's case is further fortified by a letter dated 13.12.1989 issued by the Section Officer, Government of Maharashtra extending the period for acquiring a qualification of M.Phil. degree by eight years. The Petitioner's case is further fortified by a clarification dated 13.12.1989 issued by the Government of Maharashtra to the Registrar, Bombay University.

The clarification indicates as follows :

> "teachers who are appointed on the basis of old qualifications and whose appointment has been approved by the university eventhough they have not acquired the M.Phil. degree within a period of 8 years are eligible for the senior scales on the basis of the number of years service."

18. As we have noted earlier, first Respondent by a letter dated 2.4.1982 confirmed the Petitioner as a lecturer in physics in the senior college after obtaining the approval from the University. The letter stated that the Petitioner was appointed as a permanent staff of the college as a lecturer with effect from 20.6.1982. The letter further required the Petitioner to acquire an M.Phil. within a period of five years from the date of his

appointment i.e. on or before 20.6.1982. The aforesaid clarification dated 13.12.1989 however makes it clear that the period was extended to eight years in any event. Admittedly, the Petitioner acquired the qualification in April, 1988 i.e. within the stipulated period of eight years.

In the circumstances, the Petitioner has complied with all the requirements entitling him to the reliefs claimed in the Petition.

19. Finally, it is necessary to note that the G.R. bearing No.USG/1286/1181/VC-4 specifies eligibility for teachers of the senior college who were surplus and absorbed in the junior colleges to be given the scale of 700-1600 from the date of appointment in the senior colleges. The G.R. records the back-drop of the matter viz. the introduction of the 10+2+3 system in Maharashtra from 1975-76. It records that due to this new pattern, colleges have one academic year less. Hence, to accommodate surplus teachers, of whom there were five categories, some of the teachers were absorbed in the junior colleges and that these teachers were required to be protected from the beginning as recommended by the committee under the chairmanship

of the Director of Higher Education. The Petitioner has met with all the requirements of the said G.R.

20. In the circumstances, we hold that the Petitioner is entitled to continuity of service from 15.7.1975 when he was appointed in a full time post of demonstrator in physics in the senior college, with all consequential benefits.

21. Rule is accordingly made absolute in terms of prayer clauses (b), (c1) to (c4). The State Government is directed to comply with this order within a period of three months from today.